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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Federal-State Joint Board on)
Universal Service) CC Docket No. 96-45

COMMENTS OF TELE-COMMUNICATIONS, INC. ON RECOMMENDED DECISION

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Tele-Communications, Inc. ("TCI") hereby files its Comments in response to the Recommended Decision of the Federal-State Joint Board on Universal Service in the above-captioned proceeding.¹

I. INTRODUCTION

As stated in prior comments filed in this proceeding, TCI firmly supports Congress' goals in Section 254 of the 1996 Telecommunications Act, that is, to promote access to high quality telecommunications services at reasonable rates on a universal basis. TCI appreciates the difficult and burdensome effort reflected in the Recommended Decision, especially given the short period of time in which the task had to be completed, and commends the Joint Board for achieving the progress to date.

TCI focuses in these comments upon that portion of the Recommended Decision addressing universal service support for

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision (released November 8, 1996) ("Recommended Decision").

schools and libraries. The Recommended Decision proposes a framework for implementing this part of Section 254 which TCI generally supports, but which must be tightened and more clearly defined if it is to succeed. The need for greater precision here cannot be overstated: the amount of recommended subsidy is so substantial (\$2.25 billion annually) and the goal of education too important to our nation's future to leave either to chance. Thus, assuming the Commission chooses to adopt the Joint Board's proposals in this regard, it must establish a set of specific procedures and rules, that will ensure that the money is judiciously and efficiently allocated and used to achieve the purposes intended by the statute.

Specifically, in order to comply with congressional mandates with respect to universal service, the Commission will need to ensure that all school requests and vendor proposals are comprehensive and bona fide. Schools and libraries must demonstrate that they will be able to efficiently use the services they order. Likewise, the vendors that schools employ (either sole-sourced or multi-sourced) must prove convincingly that they are capable of providing the full range of services needed. These thresholds must be subject to a state certification process before the fact and to auditing after the fact. Such requirements will ensure that the significant resources dedicated towards school and library telecommunications services are not misused or wasted.

II. SCHOOL PLANS MUST BE COMPREHENSIVE, DEMONSTRABLY USE QUALIFIED VENDORS, AND BE SUBJECT TO MEANINGFUL CERTIFICATION REQUIREMENTS AND AUDITS.

Section 254(h)(1)(B) of the Communications Act limits the schools and libraries discounts to services provided in response to a bona fide request made for services to be used exclusively for educational purposes.² In the Recommended Decision, the Joint Board has taken some initial steps to ensure that such assurances are given; however, the Commission needs to go further.

The Joint Board recommends that schools and libraries comply with three bona fide request requirements:³

- Schools and libraries requesting service will have to certify that they will be able to deploy any necessary hardware, software, and wiring, and to undertake the necessary teacher training required to use the services effectively.⁴
- Schools and libraries must submit a description of the services they desire to the fund administrator or another entity designated by the Commission which would in turn post a description of the services sought on a web site for all potential competing service providers to see and respond to as if they were RFPs.⁵
- Every school or library that requests services eligible for universal service support would be required to submit to the service provider a written request for services that certifies that the institution is

² See 47 U.S.C. § 254(h)(1)(B); Recommended Decision at ¶ 599.

³ Recommended Decision at ¶ 599.

⁴ Id. at ¶ 600 (citing Further Comments of AT&T at 14-15).

⁵ Id. at ¶ 602.

eligible to receive such services and will use them in the manner envisioned by the statute.⁶

Under the Joint Board's proposal, schools and libraries would be permitted to self-certify that they have met the three requirements discussed above.⁷ TCI sets forth below its proposed modifications of these Joint Board recommendations.

A. The Schools and Libraries Must Have Comprehensive Plans to be Eligible for Discounts.

TCI agrees with the Joint Board and the many commenters before it that have urged the Commission to require schools and libraries to develop comprehensive plans that detail how they will fund, implement and utilize access to the advanced telecommunications services and information services for which they seek financial support. Further, this demonstration must be made before the requesting institution is deemed eligible to receive such support. Several commenters have noted that educational institutions may seek subsidized services that they do not need⁸ or for which they lack the proper training or equipment.⁹

⁶ Id. at ¶ 603.

⁷ Id. at ¶ 604.

⁸ See Reply Comments of Pacific Telesis at 12 ("Many of the proposals championed by educational institutions commenting in this proceeding advocate far more bandwidth and speed than may be necessary or appropriate given that there are many schools and libraries which lack even rudimentary access to the information superhighway."). See also Comments of Wyoming Public Service Commission at 12.

⁹ See Remarks of Russell Rothstein to the Federal-State Joint Board (June 19, 1996) ("A major obstacle in obtaining full classroom connectivity is the dearth of networkable PCs in

As explained in prior filings, it has been the experience of TCI's subsidiary, ETC w/tci, Inc., that too often schools own equipment that they do not know how to utilize or to utilize efficiently. In many cases, there has been inadequate teacher training, if any. Significantly, even where teachers know how to use the equipment, they frequently do not know how to use the equipment to teach -- the very reason for providing access in the first instance. If the substantial amount of money suggested in this proceeding is to be put to its best use, it is precisely these unfortunate scenarios of waste and inefficiency which the Commission must safeguard against.

As Airtouch and other commenters noted, the universal service support system for schools and libraries will be efficient and effective only when schools and libraries are compelled to demonstrate that they have a workable plan for putting together a "whole package of services, equipment and training needed to realize" the significant educational benefits that can be gained from the use of telecommunications services.¹⁰ TCI agrees that schools and libraries need a holistic approach to upgrading their communication system for the 21st Century education. It would be suboptimal, for example, for a school to have an excellent bank of PCs, but inadequate inside wiring to

schools . . . it is unclear whether schools will have enough PCs that are sufficiently powerful to fully utilize the networking infrastructure.").

¹⁰ Further Comments of Airtouch at 8.

connect these PCs. Likewise, as noted, the Commission's important educational goals would go unmet in a school with full Internet access, but teachers untrained in the use of the Internet. As discussed in more detail below, ETC's experience suggests that schools and libraries would best be served by a "turnkey" approach in which a vendor provides a complete educational infrastructure precisely because any missing link will substantially devalue the whole to the detriment of the students, the ultimate beneficiaries of this entire exercise.

Section 254(h) (2) compels carriers to provide services to the extent "economically reasonable" and "technically feasible." Thus, the actual provision of such services is only justified when the subsidized institutions have the entire range of necessary capabilities in place.¹¹ In the words of the Joint Board, "it would not be unduly burdensome to expect schools and libraries to certify that they have 'done their homework' in terms of adopting a plan for securing access to all of the necessary supporting technologies needed to use the services purchased under Section 254(h) effectively."¹²

B. The Certification Process Must Be Meaningful.

The Joint Board expressly recognized the importance of comprehensive planning by eligible schools and established a process of self-certification to ensure this critical

¹¹ Id. at 8-9.

¹² Recommended Decision at ¶ 601.

precondition is met. TCI respectfully submits that self-certification is not sufficient to protect either the amount of resources at stake or the importance of the social goals at risk. TCI therefore urges the Commission to consider and adopt the proposal of USTA, inter alia, which would require that institutions demonstrate that they have adequately accounted for seven aspects of the successful delivery of telecommunications services to prove that their requests are bona fide: connectivity, inside-wiring, hardware, software, training, overcoming societal and cultural barriers, and ongoing operations support.¹³

In addition, TCI supports the proposals of MCI, AT&T, GTE, Pacific Telesis, Bell Atlantic, and BellSouth, urging the Commission to require schools and libraries to submit plans to a designated state agency to determine whether the request is bona fide.¹⁴ Such plans will allow the state agency to verify that the institution will use the requested services and finance any other necessary technology components, such as inside-wiring, computers, software, and teacher and student training.

¹³ Comments of USTA at 7-9.

¹⁴ See Letter from Mark Mandell, Senior Policy Advisor, MCI, ex parte at 1, 6-7 (June 27, 1996); Letter from Maurice P. Talbot, Jr., Executive Director - Federal Regulatory, BellSouth, ex parte (June 6, 1996); Comments of GTE at 20; Reply Comments of Pacific Telesis at 14; Reply Comments of Bell Atlantic at 1; Further Comments of AT&T at 14-15. See also Comments of Florida Cable at 15; Further Comments of Airtouch at 6,8; Further Comments of NYNEX at 12; Further Comments of NECA at 10; Further Comments of US West at 10.

The plans should also certify that the services will be used for the purposes contemplated by Section 254. State review and approval of these plans must be required before any discount is permitted. Absent comprehensive and bona fide technology and service plans approved by a state representative or agency, there is grave danger that the substantial investment in educational support would be wasted.

C. The Process Must Ensure the Use of Competent, Bona Fide Vendors.

Notwithstanding contrary pressure, the Joint Board appropriately declined to exclude all vendors but carriers from the opportunities to service educational needs. For the reasons set out below, the Commission should resist any continued pressure from established interests in this regard, since foreclosing such opportunities would be wrong as a matter of law and policy.

Section 254(h)(2)(A) requires the Commission to establish rules "to enhance . . . access to advanced telecommunications and information services" for schools and libraries.¹⁵ The Joint Board correctly concluded that this provision grants the Commission the authority to subsidize services other than telecommunications and information services, such as internal

¹⁵ See 47 U.S.C. § 254(h)(2)(A).

connections, that are essential in realizing "access to" telecommunications and information services.¹⁶

Internet access provided by non-telecommunications providers, such as ETC, enhances access to the information services delivered over the Internet. ETC does this most tangibly by using TCI's cable plant to provide the physical connection to the Internet. Moreover, in certain markets, TCI's underlying cable plant offers ETC and its customers substantial additional efficiencies not offered by traditional, narrowband connections for schools and libraries. For example, TCI's cable plant can provide Internet access at speeds much greater than that provided by narrowband plant. ETC believes that this distinction will prove to be a great benefit in the classroom environment.

Broadening the category of potential providers of eligible services thus enhances educational institutions' "access to" the Internet and other services. It is therefore within the Commission's authority under Section 254(h)(2)(A) to reimburse ETC and other non-telecommunications carriers for discounts they provide to schools/libraries for Internet access, e-mail, and other qualified services.

¹⁶ See Recommended Decision at ¶ 476 (finding that "[t]he provision of services by computer over the Internet appears to fall squarely within the phrase 'advanced telecommunications and information services'" and that "[a] primary way for 'classrooms' to have access to such services is for computers in each classroom to be connected to a telecommunications network" (emphasis in original)).

Such an approach is also sound policy. As mentioned, in certain markets ETC may be able to provide Internet access services more efficiently than other entities. Other non-telecommunications carriers may have similar advantages in other markets. To exclude non-carriers from eligibility for reimbursement from the federal fund would therefore undermine the Joint Board's policy goal of maximizing the value generated by universal service support and minimizing inefficient uses of services.¹⁷

Having appropriately opened up competitive opportunities to both carriers and non-carriers, however, the Commission must be very careful to ensure that the actual vendors chosen can and will in fact perform. Optimally, schools and libraries will look to experienced, capable vendors to help them formulate the essential elements of introduction of advanced services. But the Commission cannot simply assume that this will occur in all cases. Again, given the amount of the fund and the importance of the goals, the Commission must require the vendors to demonstrate convincingly that they have the experience and resources necessary to make the schools' and libraries' vision a reality. Vendors should be required to make this showing through the submission of qualifications to the same designated state agency that reviews the comprehensive plans submitted by schools and libraries.

¹⁷ See id. at ¶ 458.

For example, a qualified services provider should be required to conduct a feasibility study for each school or library it wishes to serve in order to evaluate the institution's current infrastructure and needs as they relate to the implementation of new technologies. Such an approach is critical because it is the proper combination of products, services, and training, not the simple availability of services generally, that will most effectively assist schools and libraries.

It is ETC's experience that schools' and libraries' needs can best be met by vendors that can provide one-stop shopping. This may be best accomplished through an "educational turnkey" solution in which eligible vendors would integrate training expertise with the provision of actual facilities for schools and libraries. Under a turnkey approach, an eligible vendor would offer a complete package of hardware (computers, TVs, VCRs), software, network connections (including internal connections and potentially, wide area networks and local area networks), Internet access, teacher training, and hardware and network maintenance support to each eligible school or library. While not all of these services would be eligible for support, plainly a full complement of services is necessary to ensure that the schools' and libraries' goals are met in a workable efficient manner.

TCI does not mean to preclude procurement by schools and libraries from multiple sources. But where the vendor has not

proposed to serve the school or library in a comprehensive manner, then the school must be required to demonstrate in some other credible way the bona fide nature of its proposal. In such cases, the school should be required to set forth the various pieces of its plan, matched to service providers with the requisite experience and qualifications to perform the given task, and to demonstrate the school's overall ability to implement and fund the plan.

Absent some structure that will ensure the bona fides not only of the requesting institution but also of its vendors, the Commission will be inviting waste and perhaps even fraud. It is essential that, in creating a schools and libraries universal service fund, the Commission not inadvertently create a speculative services industry in the process. The history of other government subsidy programs which have not been sufficiently disciplined and safeguarded is too well-known to go unheeded here.

D. The Joint Board Recommendation on Auditing Should Be Adopted and Expanded.

The Joint Board has also recommended that schools and libraries maintain procurement records for purchased telecommunications services which would be subject to random compliance audits to evaluate what services these institutions are purchasing and how such services are being used.¹⁸ However, in order to truly ensure that the funds allocated for discounts

¹⁸ Recommended Decision at ¶ 605.

are used for their intended purposes, the Commission should consider requiring all eligible educational institutions actually receiving discounts funded under Section 254 to file annual reports with the same state agency that reviews the comprehensive plans submitted by schools and libraries. The annual reports should be subject to audit and should describe the institutions' use of universal service support.¹⁹ If such an approach were implemented, the Commission should also send a clear message that it is prepared to invoke its legal authority to fine or otherwise discipline those administrators and institutions which make misrepresentations to the Commission as to the use of the subsidized services.²⁰

¹⁹ See Further Comments of USDLA at 7; Further Comments of U S West at 9.

²⁰ See Further Comments of PacTel at 21; Further Comments of NCTA at 5.

III. CONCLUSION

TCI supports the essential goals of this proceeding. In order to optimally serve these important goals, the Commission must carefully craft rules and procedures that will ensure that the monies raised will in fact be spent efficiently and on those services and facilities that will best achieve Congress' goals.

Respectfully submitted,

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December 19, 1996

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